IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

WEDNESDAY, THE 5TH SEPTEMBER 2007 / 14TH BHADRA 1929

CRL.A.No. 329 of 2006()

SC.205/2004 of ADDL. SESSIONS COURT (ADHOC)FAST TRACK COURT-I, THRISSUR
CP.80/2003 of JUDL. MAGISTRATE OF FIRST CLASS COURT, IRINJALAKUDA

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APPELLANT: APPELLANT.

CHANDRAN, S/O.THAIPPARAMBIL KRISHNAN,
THAZHEKKAD, ALOOR, THRISSUR(NOW IN JAIL).

BY ADV. SRI.PROMY KAPRAKKATT
SRI.K.N.ABHILASH

RESPONDENT :

THE STATE OF KERALA, REPRESETNED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY P.P.SRI.PUZHAKKARA MOHAMMED

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 05/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. THANKAPPAN, J.

CRL.A.NO.329 OF 2006

Dated this the 5th day of September, 2007.

JUDGMENT

Appellant was the accused in S.C.No.205/2004 on the file of the 3rd Additional Sessions Judge (Adhoc) Fast Track Court No.I, Trichur. He faced trial for the offences punishable under Sections 324 and 307 of the I.P.C on the allegation that on 10.1.2002 at about 12.30 p.m, the appellant inflicted two stab injuries on PW1, the wife of the appellant, at Aloor panchayat road within the limits of Kodakara Police Station. To prove the case against the appellant, 11 witnesses were examined and Exts.P1 to P13 were produced. MOs 1 to 6 were also produced before the court. When the appellant was questioned under Section 313 of the Code, he has stated that there was a scuffle ensued between himself and his wife, in which the husband of sister of PW1 was also involved and he did not know anything further about the incident. The trial court accepted the prosecution evidence and found the appellant guilty of the offences punishable under Sections 324 and 307 of the I.P.C and he was convicted thereunder and sentenced to undergo R.I for two years under Section 324 and R.I for four

years and to pay a fine of Rs.10,000/= with default sentence of payment of fine, to undergo R.I for a further period of one year under Section 307 of the I.P.C. The trial court further ordered that if fine is realised, the same shall be paid to PW1 as compensation. The court also allowed concurrent sufferance of the substantive sentences and the benefit of Section 428 of the Cr.P.C. The judgment of the trial court is challenged in this appeal.

2. This Court heard the learned counsel appearing for the appellant as well as the Public Prosecutor. The counsel appearing for the appellant had raised the following contentions for challenging the judgment of the trial court. Firstly, it is contended that the trial court ought not have believed the prosecution witnesses especially PW1 as she was separated from the appellant and was keeping animosity towards him. Secondly, it is contended that the trial court misread the evidence adduced by the prosecution with regard to the recovery of MO6 knife and also the place of occurrence as alleged by the prosecution. Thirdly, it is contended that the medical evidence adduced by the prosecution would not show that the appellant had committed an offence punishable under Section 307 of the I.P.C. Lastly, it is contended that the punishment awarded

against the appellant is excessive and hence, this Court may show some leniency towards the appellant in the matter of punishment.

3. Before considering the contentions raised in this appeal, it is noted by this Court that the appellant was found guilty by the same trial court for the offences punishable under Sections 307 and 498 A of the I.P.C for causing injuries on PW1, the wife of the appellant in an earlier incident, which occurred on 14.8.1997 at a panchayat road in Thazhekkad village in Kallettumkara desom. In that case, the trial court also sentenced the appellant to undergo R.I for four years under Section 304 and R.I for two years under Section 498 A of the I.P.C. Against the judgment of the trial court in that incident, Crl.A.No.330/2006 was also filed by the appellant. The counsel appearing in both the appeals one and the same. In the above circumstances, the counsel submits that if this Court confirms the judgment of the trial court, benefit of Section 427 of Cr.P.C may be given to the appellant.

4. The prosecution case against the appellant in this case is that the appellant married PW1 about 12 years back and after the lapse of four years of their married life, the appellant used to entertain

doubt regarding chastity of PW1 and a child was also born within that four years of married life and they separated. However, due to the interference of the mediators, the appellant and PW1 joined together and had another child. At the time of the incident, PW1 had two children, aged 7 and 4 and still the appellant was not in good terms with PW1 and he was keeping animosity towards her on doubting her chastity and the appellant and PW1 were leading a separate life during the incident. On the date of the incident, namely on 1.10.2002 PW1 had gone to see a doctor and she was returning from there with her two children and when she reached near the house of one Varghese at Aloor panchayat road, PW1 had noted that the appellant was coming behind her and immediately on reaching PW1, the appellant caught hold of her neck and she was forcefully taken to a distance near the house of one Mary Varghese and the appellant took out a knife and inflicted an injury on the back of her body and on receipt of the injury, PW1 fell down to the courtyard of the above said Mary Varghese and when PW1 tried to stand up, the appellant again inflicted injury on the chest. People around the locality came to the spot and PW1 was taken to the Medical College Hospital, Trichur. At the hospital, she was treated by PW7. An F.I Statement has been furnished by the S.I of Police. PW2 is an eye

witness to the occurrence and on completion of the investigation, final charge has been filed before the court. The trial court believed the evidence of PW1 – the injured, PW2 – an eye witness and PW3- an occurrence witness to the incident. The trial court also believed the evidence of PW7, who treated PW1 at the hospital and had given Ext.P6 wound certificate. Pws 4 to 6 are the witnesses, examined to prove the scene mahazar and the recovery mahazer of MO1. PW8 is the sub Inspector of Police, who had recorded Ext.P1 F.I. Statement. Pws 9 and 10 are the Sub Inspectors of Police who had conducted part of the investigation. PW11 is the Circle Inspector of Police, who had completed the investigation and filed the final charge.

5. The trial court considered the evidence of PW1- the injured, who had stated before the court that she was stopped by the appellant on the day of the incident and she was taken to the hospital on the same day by PW2 and others. To support the evidence of PW1, the trial court considered the evidence of PW2, who had stated before the court that at the time of the incident, he was just behind PW1 and the appellant. This witness has stated that the incident was at 12.30 p.m and while he was coming behind the

appellant and PW1, he had seen that the appellant caught hold of the neck of PW1 and taking her to a distance and thereafter the appellant took out a knife and inflicted injury on the back side of the body of PW1. This witness also had stated that when PW1 tried to stand up, the appellant inflicted another stab injury on the chest of PW1. This witness also had stated that when PW2 and other persons approached the scene, the appellant tried to threaten them by waving his knife. However, this witness has stated that PW1 was subsequently taken to the hospital and he had given Ext.P1 F.I.Statement to the Sub Inspector at 2.30 p.m on the same day. Though Pws 1 and 2 were cross-examined by the defence, their evidence has not been tilted and hence, the trial court believed the evidence of these witnesses and found that the appellant is responsible for causing injuries to PW1. Further, to support the evidence of Pws 1 and 2 the prosecution examined PW3 as the occurrence witness to the incident. He had stated that he had seen PW1 as got injured and PW1 was taken to the hospital by the people. The evidence of these three witnesses were believed by the trial court and relying on the evidence of these witnesses, the trial court had considered the evidence of PW7, who had treated PW1 at the hospital. PW7 had noted the following injuries on the body of

PW1.

"1. Penetrating injury of 3.5cm x 3 cm x 3 cm depth directed laterally over right upper and anterior aspect of right breast.

2. Penetrating wound 4.5 x 3 x 6 cm depth on the back right side directed upwards and medially up to the spinal process. "

6. This witness has stated that he had issued Ext.P6 wound certificate and this witness has stated that PW1 was conscious and was oriented at the time of his examination and the history of the injury had been stated by PW1 herself to him. When this witness was cross examined , he had stated that both the injuries noted in Ext.P6 would be caused by stabbing with a knife like MO6. The trial court found that even though PW7 was cross examined at length, nothing was brought out from his evidence to discredit or to doubt the veracity of his evidence. Hence, the trial court found as per the evidence of PW7 it was established that PW1 was injured as alleged by the prosecution. The trial court also had considered the evidence of other witnesses including the Sub Inspector of Police – PW10, who had gone to the place of occurrence and prepared Ext.P2 scene mahazar. The trial court also believed the evidence of PW11, the

Circle Inspector of Police, who had arrested the appellant and questioned him and on questioning the appellant it was revealed that the appellant had hidden MO6 knife in bushes on the northern side of Karakulam and as per the statement given by the appellant, MO6 was recovered.

7. After considering the entire evidence once again and an over all appreciation of the entire evidence, this Court is of the view that the findings entered by the trial court require no interference and the findings are on the evidence adduced by the prosecution. In the above circumstances, this Court finds that the prosecution succeeded in proving that the appellant had inflicted stab injuries on PW1 and had committed the offences punishable under Sections 324 and 307 of the I.P.C. The trial court is justified in finding the appellant guilty of the above offences. Hence, the contentions raised by the counsel appearing for the appellant are not sustainable.

8. The next question to be considered is whether the sentence awarded against the petitioner is excessive or not. This question was considered by the trial court and the trial court was found that the appellant is not entitled for any leniency considering the entire facts

and circumstances of the case. The fact that the appellant had inflicted injuries on his own wife, who is having two minor children requires no interference or the appellant is not entitled for any leniency in the question of sentence awarded by the trial court.

In the result, the judgment is confirmed in all other respects and the appeal is dismissed as merit less.

K. THANKAPPAN, JUDGE.

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